



COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

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DANA COX NICKLES
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EXECUTIVE BRANCH ETHICS COMMISSION ADVISORY OPINION 09-6 January 23, 2009

RE: May a former biologist for the Kentucky Department of Fish and Wildlife Resources accept employment immediately after retirement with a business that seeks to involve itself in projects the employee helped develop while employed by the state?

DECISION: No.

This opinion is issued in response to your January 9, 2009 request for a post employment advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the January 23, 2009 meeting of the Commission and the following opinion is issued.

You make the following representations. You were employed by the Kentucky Department of Fish and Wildlife Resources ("KDFWR") until August 1, 2008, as a Fisheries Research Biologist. During your employment you coordinated the KDFWR's Stream Mitigation Program and your duties included locating stream projects and developing conceptual plans.

You began working for ENTRAN, an engineering and environmental consultant on October 1, 2008. ENTRAN has not previously done work for KDFWR in the past but hopes to get involved with stream restoration, including KDFWR stream projects, in the future. In the next few weeks, the Finance Cabinet will begin the selection process regarding certain KDFWR stream projects for which you either prepared or helped prepare conceptual plans. In addition to identifying the streams and preparing the conceptual plans for KDFWR, you visited those sites and communicated with the landowners. However, you state you have not participated in any meetings or discussions with selection committee members, or anyone else regarding which firms the projects should be awarded to. You ask at what point you, as an ENTRAN employee, can attend selection committee interviews for those stream projects and at what point you can actually begin working on the project.

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Because you are not an officer as defined in KRS 11A.010(7), you are not subject to the post-employment restrictions in KRS 11A.040(6) or (7). However, you are subject to the restrictions contained in KRS 11A.040(8) and (9) as stated below:

(8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which the former public servant was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

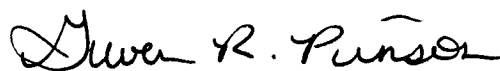
(9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:

- (a) The date of leaving office or termination of employment; or
- (b) The date the term of office expires to which the public servant was elected.

Thus, for one year, you may not act as a legislative agent or executive agency lobbyist in matters in which you were directly involved. Executive agency lobbying can include involving yourself in contract negotiations. In addition, for one year, you may not represent a person or business before a state agency in any matter in which you were directly involved during your state tenure. "Represent" means to attend an agency proceeding, write a letter, or communicate with an employee of an agency on behalf of someone else. The term "directly involved" refers to matters you worked on personally or the supervision of someone who worked on the matter personally. Having been directly involved in the Stream Mitigation Program, you are prohibited from representing ENTRAN in its attempts to get involved with KDFWR stream projects for a period of one year after the date you terminated your employment with KDFWR. You therefore cannot attend selection committee interviews for KDFWR stream projects until August 1, 2009.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: Gwen R. Pinson